87-582

No._____

IN THE

Supreme Court of the United States

October Term, 1987

ROBERT ANDREW ADMAN,

Petitioner,

vs.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ROBERT ANDREW ADMAN, ESQ.
Petitioner, Pro Se
714 Powers Building
Rochester, New York 14614
Telephone: (716) 325-3290

Batavia Times Publishing Co.
Batavia, N.Y. (716) 344-2000

23pp

Questions Presented for Review

1. If a substantive property interest is taken by the Government in a case that would create tort liability against an individual, is the Government exempt from Taking Clause liability on the basis that the Tucker Act excludes claims "sounding in tort"?

2. If an action is brought in New York for appropriation of a business opportunity, does the property interest in that action consist of the business opportunity or the tort claim?

TABLE OF CONTENTS.

	Page
Questions Presented for Review	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	1
Statement of Jurisdiction	2
Relevant Constitutional and Statutory Provisions	3
Statement of the Case	4
Reasons for Granting Writ	5
Conclusion	8
Appendices:	
A—Decision of Court of Appeals for the Federal Circuit	1a
B—Decision of Claim Court, third count (¶¶6-7 therein)	3a
C—Complaint, first count's public use allegations; third count (¶¶1-6 and 29-32)	5a
D—Amendment of Complaint ¶30	9a
E—Petitioner's Court of Appeals Appendix, Page 16	10a
F—Petitioner's Court of Appeals Brief, Page 15	11a

TABLE OF AUTHORITIES.

Cases:

	Page
Advance Music Corp. v. American Tobacco Co., 296 N.Y. 79, 70 N.E.2d 401 (1946)	6
American Bank and Trust Co. v. Federal Reserve Bank, 256 U.S. 350 (1921)	6
Aronson v. Quick Point Pencil Co., 440 U.S. 257 (1979)	7
Atwater & Co. v. United States, 275 U.S. 188 (1927)	5
Bigby v. United States, 188 U.S. 400 (1903)	6
Delaney, Matter of, 256 N.Y. 315, 176 N.E. 407 (1931)	7
Dooley v. United States, 182 U.S. 222 (1901)	5
Federal Waste Paper Corp. v. Garment Center Capitol, Inc., 268 A.D. 230, 51 N.Y.S.2d 26 (1st Dept. 1944)	6,7
German Bank of Memphis v. United States, 148 U.S. 573 (1893)	5
Griggs v. Allegheny County, 369 U.S. 84 (1962)	5
Hecht v. Pro-Football, Inc., 570 F.2d 982 (D.C.Cir. 1977)	7
International Paper Co. v. United States, 282 U.S. 399 (1931)	6
Jacobs v. United States, 290 U.S. 13 (1933)	7
Keviczky v. Lorber, 290 N.Y. 297, 49 N.E.2d 146 (1943)	6,7
Langford v. United States, 101 U.S. 341 (1879)	5
Portsmouth Harbor Land & Hotel Co. v. United States, 260 U.S. 327 (1922)	5,6
Potomac Electric Power Co. v. Director, OWCP, 449 U.S. 268 (1980)	5
Powers Mercantile Corp. v. Feinberg, 109 A.D.2d 117, 490 N.Y.S.2d 190 (1st Dept. 1985)	6

Page

Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980) 7
Tappan Motors, Inc. v. Waterbury, 65 Misc.2d 514, 318 N.Y.S.2d 125 (Sup.Ct. 1971) 6
United States v. Willow River Power Co., 324 U.S. 499 (1945) 6
White Mountain Apache Tribe of Arizona v. United States, 8 Cl.Ct. 677 (1985) 8

Constitution:

U.S. Const. Amend. V 5,7,8

Statutes:

28 U.S.C. §1295(a)(3) 5
28 U.S.C. §1491(a)(1) 5

IN THE

Supreme Court of the United States

October Term, 1987

No._____

ROBERT ANDREW ADMAN,

Petitioner,

vs.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Opinions Below

The opinion of the United States Court of Appeals for the Federal Circuit, dated and entered July 14, 1987, is unreported (Appendix A). The opinion of the United States Claims Court, dated and entered December 18, 1986, is unreported (Appendix B).

Statement of Jurisdiction

Jurisdiction of United States Claims Court was asserted under the Tucker Act, 28 U.S.C. §1491, that being the issue in this petition. Final judgment was entered in favor of respondent on July 14, 1987 by the United States Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. §1295(a)(3). This petition is brought under 28 U.S.C. §1254(1).

Relevant Constitutional and Statutory Provisions

U.S. Constitution Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time or War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C. §1295(a)(3): The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction—(3) of an appeal from a final decision of the United States Claims Court.

28 U.S.C. §1491(a)(1): The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

Statement of the Case

In late 1984 a Swiss firm that planned to make a thermometer of petitioner's design was turned down by an essential subcontractor, a German firm, due to a request from United States officials. The Swiss firm would otherwise have entered into an agreement to compensate petitioner for that design. The same officials then made efforts to secure the same production and agreement for petitioner in the United States, but were unsuccessful. No patent rights were involved.

These officials hoped by this means to substitute a United States school for concomitant medical research, also proposed by petitioner, that a Swiss university was to conduct.

Petitioner subsequently filed a United States Claims Court complaint in three counts, including appropriation of his property by the Government, being the Swiss business opportunity that would have culminated in agreement but for the Government's actions. That court dismissed that third count on December 18, 1986, ruling that there could be no Just Compensation property without a contract. The Federal Circuit affirmed on July 14, 1987. Dismissal of the first two counts for implied-in-fact contract was not appealed.

The Government said that it had no evidence favorable to petitioner, and the courts below did not compel discovery, so that review rests upon the allegations of the complaint alone.

The proper Constitutional clause was repled by leave. Amendment to plead public use was not granted because of the ruling on property, however.

REASONS FOR GRANTING WRIT

The one Court of Appeals for major Tucker Act cases disregarded the well-established statutory tort definition and constitutional property definition.

The Federal Circuit defines Tucker Act jurisdiction and Taking Clause property under obsolete holdings of this Court. Only that circuit hears Tucker Act appeals, for claims over $10,000, 28 U.S.C. §1295(a)(3), and it speaks authoritatively on these subjects.

First. A taking for property that would be a tort by an individual is not necessarily excluded from Tucker Act jurisdiction as "sounding in tort." *Portsmouth Harbor Land & Hotel Co. v. United States*, 260 U.S. 327 (1922). In *Portsmouth Harbor* the taking claim consists of diminished value for nuisance, *Griggs v. Allegheny County*, 369 U.S. 84 (1962), a private tort. *Cf.* dicta in *Dooley v. United States*, 182 U.S. 222 (1901) and *Atwater & Co. v. United States*, 275 U.S. 188 (1927). That longstanding construction of the Tucker Act cannot be freely altered, *Potomac Electric Power Co. v. Director, OWCP*, 449 U.S. 268, 283-84 (1980), notwithstanding the Federal Circuit's views.

That is a twentieth-century construction. Once "tort" meant any violation of a legal duty not sounding in contract, evolving from the Court of Claims' original audit function. *Langford v. United States*, 101 U.S. 341, 344-46 (1879); *German Bank of Memphis v. United States*, 148 U.S. 573, 579-80 (1893). The Federal Circuit follows *Langford*. In this Court "tort" means violation of a legal duty not sounding in contract where an appropriation does not result. *Portsmouth Harbor, Griggs*.

To ruin a business opportunity without more is still a tort. *Bigby v. United States,* 188 U.S. 400 (1903). To divert a business opportunity from one place to another for a public purpose is an appropriation, however. *Cf. International Paper Co. v. United States,* 282 U.S. 399 (1931).

The function of tort liability is to set the standard of legal liability for the Government, an element of an appropriation case. *United States v. Willow River Power Co.,* 324 U.S. 499 (1945). The standard in the present case is disinterested malice (*prima facie* tort). *Advance Music Corp. v. American Tobacco Co.,* 296 N.Y. 79, 70 N.E.2d 401 (1946). *Cf. American Bank & Trust Co. v. Federal Reserve Bank,* 256 U.S. 350 (1921). The Government fell short of the standard; it is a tortfeasor no more than *Portsmouth Harbor* officials firing coastal guns.

Second. Misappropriation of a business opportunity is injury to property in New York. *Powers Mercantile Corp. v. Feinberg,* 109 A.D.2d 117, 119-120, 490 N.Y.S.2d 190, 192 (1st Dept. 1985), *aff'd without opinion* 67 N.Y.2d 981, 502 N.Y.S.2d 1001, 494 N.E.2d 106 (1986). That loss is actionable where there is unjust enrichment, *Keviczky v. Lorber,* 290 N.Y. 297, 49 N.E.2d 146 (1943), breach of trust, *cf. Powers Mercantile Corp.,* or disinterested malice, *Advance Music Corp.* The same view prevails in equity. *Federal Waste Paper Corp. v. Garment Center Capitol, Inc.,* 268 A.D. 230, 234, 51 N.Y.S.2d 26, 29 (1st Dept. 1944), *aff'd without opinion* 294 N.Y. 714, 61 N.E.2d 451 (1945); *Tappan Motors, Inc. v. Waterbury,* 65 Misc.2d 514, 318 N.Y.S.2d 125 (Sup.Ct. 1971).

These cases articulate the New York rule that the right to engage in a trade without unjustifiable hindrance is a property right; present and prospective customers are not placed on a different footing. The holding below would have been more appropriate to a Clayton Act case, *e.g., Hecht v. Pro-Football, Inc.*, 570 F.2d 982, 994-95 (D.C.Cir. 1977). It is a clear misstatement of New York law to say that a contract is property but not the opportunity to conduct trade that a subsequent agreement will consummate. *Keviczky* controls, not *Hecht.*

That is because local law is the content of Taking Clause property. *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 84 (1980). (Likewise, local law controls the nature of any rights where there is an expired patent application, *e.g.*, the industrial technique here, *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257.) Since local law determines what has been taken, any conflicting tort designation in the Tucker Act is prohibited by Constitutional supremacy. The Act is a subordinate determination of the extent of compensation. *Jacobs v. United States*, 290 U.S. 13, 16 (1933).

A claim is also property in New York, *Matter of Delaney*, 256 N.Y. 315, 176 N.E. 407 (1931), but the Government did not create or take away a tort claim against itself or anyone else. The opinion below says that petitioner argued that the tort itself was property. The argument is not so simple. Petitioner argued that an economic interest protected by a tort action is a right that is property under local law, citing *Federal Waste Paper Corp.*, Appendix F.

Finally, petitioner's allegations are taken as true for purposes of the Government's motion to dismiss. *White Mountain Apache Tribe of Arizona v. United States*, 8 Cl.Ct. 677, 681 (1985). The Government, having obtained a protective order, recited discovery demands to show that the allegations were false. The opinion below ("no basis in law or fact") suggests that the Government's motion may have been taken without any safeguards against fraud. Petitioner is the party entitled to a presumption about the merits of the case, and the Government's *pro forma* accounting is wholly inadequate for a judicial determination.

Conclusion

The Federal Circuit has adopted a definition of property and of the tort exclusion that turns back the clock on this Court's teachings about Just Compensation. Those are central issues in that bulwark against arbitrary governance. A writ should issue.

Dated October 8, 1987.

Respectfully submitted,

ROBERT ANDREW ADMAN, ESQ.
Petitioner, Pro Se
714 Powers Building
Rochester, New York 14614
Telephone: (716) 325-3290

APPENDIX A

Decision of Court of Appeals for the Federal Circuit

Note: This opinion has not been prepared for publication in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

UNITED STATES COURT OF APPEALS
For the Federal Circuit

87-1194

ROBERT ANDREW ADMAN,
Plaintiff-Appellant,

v.

THE UNITED STATES,
Defendant-Appellee.

Decided: July 14, 1987

Before BISSELL, *Circuit Judge,* MILLER, *Senior Circuit Judge,* and ARCHER, *Circuit Judge.*

PER CURIAM.

DECISION

The final judgment of the United States Claims Court, No. 479-86C (December 18, 1986), dismissing Adman's complaint, is *affirmed* on the basis of the trial court's order.

Appendix A—Decision of Court of Appeals for the Federal Circuit.

OPINION

The issue on appeal is whether the Claims Court erred as a matter of law in dismissing the third cause of action of the complaint, in which Adman alleged that the claim arose "out of the taking of property of plaintiff without due process of law, contrary to the provisions of the Fifth Amendment to the U.S. Constitution . . . ." Appendix for Appellant at 9, ¶30. As to this cause of action, the Claims Court stated:

> He alleges that a "contract in lieu of royalties was to be awarded plaintiff" but defendant "directly or indirectly" induced an indispensable subcontractor to refuse to participate in the agreement. It is apparent that a contract was never formed; therefore, plaintiff never had a property right within the meaning of the Fifth Amendment. . . . At most, plaintiff claims the tort of interference in inchoate contract rights and, again, this court has no jurisdiction over tort claims.

Appendix for Appellant at 3.

We grant the Government's request that sanctions be imposed upon Adman for filing a frivolous appeal. The sole argument which Adman makes in support of his appeal is that the property which was taken by the United States was his tort claim against the United States—not a tort claim against some third party. Adman's contention that his tort claim against the United States is itself "property" subject to a Fifth Amendment taking has no basis in law or fact. Because Adman has presented no rational basis for reversal of the judgment of the Claims Court, the government is awarded double costs and damages of $500.00. *See Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1554-55 (Fed. Cir. 1983).

APPENDIX B

Decision of Claim Court, third count (¶¶6-7 therein)

IN THE UNITED STATES CLAIMS COURT

No. 479-86C
(Filed December 18, 1986)

ROBERT ANDREW ADMAN,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

MEMORANDUM ORDER

[first five paragraphs dismissing first two counts omitted]

In his final count, plaintiff maintains that defendant has taken his property "without due process of law, contrary to the provisions of the Fifth Amendment . . . ." As plaintiff concedes, however, this court has no jurisdiction over claims based on the due process clause of the Fifth Amendment because it does not "mandate [that] money damages be paid" as a remedy for its violation. *Alabama Hospital Ass'n v. United States*, 656 F.2d 606, 609 (Ct.Cl. 1981); *Carruth v. United States*, 627 F.2d 1068, 1081 (Ct.Cl. 1980).

Appendix B—Decision of Claim Court, third count (¶¶6-7 therein).

In his brief, plaintiff recognizes that a taking claim must be based on the "Just Compensation" clause of the Fifth Amendment, which provides that "private property [shall not] be taken for public use, without just compensation." He alleges that a "contract in lieu of royalties was to be awarded plaintiff" but defendant "directly or indirectly" induced an indispensable subcontractor to refuse to participate in the agreement. It is apparent that a contract was never formed; therefore, plaintiff never had a property right within the meaning of the Fifth Amendment. This count, too, must be dismissed for failure to state a claim. At most, plaintiff claims the tort of interference in inchoate contract rights and, again, this court has no jurisdiction over tort claims.

Accordingly, it is ORDERED that defendant's motion to dismiss is GRANTED, and the case will be DISMISSED.

/s/ H. ROBERT MAYER
H. Robert Mayer

APPENDIX C

Complaint, first count's public use allegations; third count (¶¶1-6 and 29-32)

UNITED STATES CLAIMS COURT

Dkt. No. 479-86 C

ROBERT ANDREW ADMAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT

Plaintiff respectfully shows the court for his complaint herein:

FIRST CAUSE OF ACTION

On personal knowledge

1. Plaintiff is 44 years of age and resides at 21 Laurelhurst Road, Rochester, New York 14626, with law offices at 714 Powers Building, Rochester, New York 14614.

2. Plaintiff's first cause of action arises out of an implied contract with defendant, the particulars of which are set forth below.

3. Plaintiff filed a U.S. patent application early in 1982 for a process to make mercury thermometers whose parts are formed by liquid tin under pressure. Said application thereafter lapsed for want of prosecution.

Appendix C—Complaint, first count's public use allegations; third count (¶¶1-6 and 29-32).

4. During and after June, 1983, plaintiff circulated a proposal for research concerning the action of vitamin A and its co-enzymes that dealt principally with the rate of metabolism in arthritics as a function of vitamin A activity. Preliminary work in Europe, on information and belief, indicates that said work is of considerable significance. That research was circulated among various European medical schools in the following cities: Uppsala, Lund, Basel, Zurich, Vienna, Innsbruck, and Dublin.

On information and belief

5. In 1984 defendant learned that a Swiss university and a Swiss thermometer manufacturer were going to undertake plaintiff's aforesaid medical and technical work, respectively, with the component thermometer tubing to be made by a West German firm. Defendant induced the Government of the Federal Republic of Germany to persuade the West German firm to refuse to make said component, and neither the Swiss university nor the Swiss thermometer firm carried out said plans. Plaintiff will offer circumstantial evidence of same, viz, that defendant thereafter sought to offer plaintiff a like proposal, when in fact and in truth no U.S. thermometer firm had ever expressed interest in plaintiff's process and defendant had never before offered any financial inducement other than salary and grants to a U.S. scientist, as defendant considered plaintiff to be; and in addition, defendant has exclusive control of evidence on this point but will invoke evidentiary privileges to avoid disclosure of same.

Appendix C—Complaint, first count's public use allegations; third count (¶¶1-6 and 29-32).

6. To induce plaintiff to solicit U.S. medical schools to conduct said research, defendant in late 1984, acting through its President and his closest advisors, undertook to find a U.S. business firm that would make glass thermometers according to plaintiff's process and that would compensate plaintiff accordingly, although plaintiff's patent application had lapsed. Defendant did so to avoid loss of national prestige in having a foreign medical school carry out research of a U.S. citizen, viz, plaintiff.

[¶¶7-28 omitted. Remainder of first cause of action recites that Government found an agent and formed an implied-in-fact contract with plaintiff.]

THIRD CAUSE OF ACTION

29. Paragraphs 1 and 3 of this complaint are incorporated herein by reference.

30. Plaintiff's third cause of action arises out of the taking of property of plaintiff without due process of law, contrary to the provisions of the Fifth Amendment to the U.S. Constitution, the particulars of which cause of action are set forth below.

On information and belief

31. Defendant learned that a contract in lieu of royalties was to be awarded plaintiff in late 1984 by the Geneva, Switzerland firm of Rueger for the manufacture of glass thermometers by use of plaintiff's process, with compensation of $128,000 per annum to plaintiff until age 66, and that a Mainz, West Germany firm of Schott and Co. was to be awarded a subcontract by Rueger for

the manufacture of component tubing. Thereafter defendant, through an instrumentality unknown to plaintiff, directly or indirectly induced said subcontractor to refuse to accept said subcontract, knowing full well that said subcontractor was the sole firm on the continent of Europe with the technical capability to make said tubing by means of plaintiff's process. As a direct consequence thereof, said Rueger firm was unable to award plaintiff said contract, all to plaintiff's damage in the amount of $128,000 compensation per annum to age 66.

32. Defendant induced said subcontractor to refuse to accept said subcontract by means of stealth, and failed to award plaintiff compensation therefor, contrary to the aforesaid provisions of the U.S. Constitution.

Wherefore plaintiff prays for:

[Ad damnum clause for $2,500,000.00 damages for each cause of action and incidental relief omitted.]

Dated: August 4, 1986

/s/ ROBERT ANDREW ADMAN
Robert Andrew Adman, *Pro Se*
714 Powers Building
Rochester, New York 14614
Telephone: (716) 325-3290

APPENDIX D

Amendment of Complaint ¶30

IN THE
UNITED STATES COURT OF APPEALS
For the Federal Circuit

No. 87-1194

ROBERT ANDREW ADMAN,
Plaintiff-Appellant,

v.

THE UNITED STATES,
Defendant-Appellee.

AMENDMENT OF COMPLAINT
UNDER 28 U.S.C. ¶1653

PLEASE TAKE NOTICE that Appellant hereby amends his complaint by order of the Court of Appeals filed March 16, 1987 by substituting for ¶30 thereof the following:

> 30. Plaintiff's third cause of action arises out of the taking of property of plaintiff without just compensation, under the provisions of the Fifth Amendment to the U.S. Constitution and Title 28, Section 1491, U.S. Code.

Dated March 26, 1987.

ROBERT ANDREW ADMAN
Robert Andrew Adman
Plaintiff-Appellant pro se
714 Powers Building
Rochester, New York 14614
Telephone: (716) 325-3290

APPENDIX E

Petitioner's Court of Appeals Appendix, Page 16

[A16] Appeal No. 87-1194

B. ELEMENTS OF A TAKING: PUBLIC USE IS FOUND IN THE THIRD CAUSE OF ACTION.

While allegations of a public use in the first cause of action should be incorporated into the third cause of action, *supra* n. 53, the complaint is consistent with a public use required for a valid taking claim.

Paragraph 31 of the complaint alleges that by influencing a tubing subcontractor defendant was able to prevent a contract being awarded to plaintiff, which by implication was to further defendant's purposes set forth in ¶¶6 and 7 of the complaint. That is, if a Swiss contract had been awarded plaintiff, there would have been no purpose in defendant's offering a similar contract.

Assuming that the President was the officer responsible for the taking pending a response to plaintiff's discovery demands on that point,[60] then implementation of statutory policy for the promotion of scientific research[61] provides the purpose for the taking. Once the public purpose has been established, a series of cases show that the actual mechanics of the taking are irrelevant to a determination of public use.

Plaintiff alleges in ¶3 of the complaint that the patent rights to the

[60] Defendant is correct that the third cause of action does not allege the agent of the Government who ordered the taking, Motion to Dismiss 11. By implication from ¶¶6 and 7 of the first cause of action, that official was the President. Defendant is entitled to object to this ommission, but cites no authority for the contention that that defect is grounds for dismissal. Defendant has now waived any Rule 12(e) motion, Point I.E. *supra*. Plaintiff has discovery demands outstanding to determine that point, and defendant should be required to respond to those demands to meet its objection.

[61] Note 8 *supra* and n. 78 *infra*.

APPENDIX F

Petitioner's Court of Appeals Brief, Page 15

III. *AN ECONOMIC INTEREST PROTECTED BY A TORT ACTION IS PROPERTY UNDER NEW YORK LAW*

Taking Clause property is defined by reference to local law of the state. *Causby*, 266; *Pruneyard*, 84; *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179 (1979). Tort law is primarily a matter of state law. *Wheeldin v. Wheeler*, 373 U.S. 647 (1963); *Katz v. United States*, 389 U.S. 347, 351-52 (1967).

A chose in action is the unlawful violation of a right, *Baltimore Steamship Co. v. Phillips*, 274 U.S. 316, 321 (1927), which is property in New York, *In re Delaney*, 256 N.Y. 315, 320, 176 N.E. 407, _____ (1931). The right may be the interest that New York protects in prospective economic advantage or in treatment without deliberate injury (prima facie tort). That serves the ability to conduct a business[10] without improper hindrance. *Federal Waste Paper Corp. v. Garment Center Capitol*, 268 A.D. 230, 234, 51 N.Y.S.2d 26, _____ (1st Dept. 1944), *aff'd* 294 N.Y. 714, 61 N.E.2d 451.

New York protects such interests by an action at law with special damages. A claim in such an action constitutes property. The Claims Court action furthers United States policies by permitting the sovereign to appropriate those interests, but does not impede New York policies about the scope of legal protection. In the same way the Court of Claims recognized Spain's protection against false imprisonment in *Meade*; the Ninth Circuit deferred to California's wrongful death remedy in *Bali Air Crash*.

New York protection against improper interference with

[10] A patent is not required. Aronson v. Quick Point Pencil Co., 440 U.S. 257, 261-62 (1979).

* * *